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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 463

ANNA H. MORGAN,

Appellant,

vs.

STATE OF OHIO,

Appellee.

BRIEF FOR APPELLEE

INTRODUCTION

Counsel for the State of Ohio, appellee herein, is fully aware of the weight of authority of the recent decisions of this Honorable Court which appear to support the contentions of the appellant herein. Appellant's brief cites them, quotes from them, and analyzes them exhaustively. In fact, we can say with all candor that in the face of those decisions, it would perhaps be better for the State of Ohio to "fold its tent and silently steal away" from further arguments upon the questions presented herein.

But, the State of Ohio will not confess judgment for the appellant and quietly surrender many of the principles which that sovereign state has sought, fought for, attained, and enjoyed for the past 170 years.

Because Ohio has maintained its sovereignty as one of these United States for more than a century and a half, and stands inexorably opposed to any attempt to destroy that soverignty in any manner—whether by overt force and violence or whether by an insidious infiltration of our political, governmental, and educational institutions, we have unrelentingly pursued the prosecution of this case through all of the courts for almost six years, and will not now retreat from our position.

Our arguments herein are based upon an entirely different theory of this case from that presented in appellant's brief, and we very respectfully, but very candidly, submit that if the recent decisions of this Honorable Court, as set forth in appellant's brief, are to be construed as foreclosing the State of Ohio from further argument on the questions therein discussed, no document shall ever approach this brief in the realm of futility. It is our purpose herein to show why those decisions do not——or should not—apply to the case at bar. We have a further purpose in that there are pending in the Ohio Courts ten additional cases which are similar in nature but do not arise on the exact same fact pattern, and each of which presents one or more, but not all, of the questions presented herein. Since there is—there must be—a point at which the rights and privileges of the individual no longer supercede the powers and duties of the sovereign state—for otherwise government as we know it must crumble and fall into a state of lawlessness—we respectfully submit that such point must be determined as to the case at bar and so specifically fixed that it cannot be further extended to cover the other ten cases by "the momentum of adjudication whereby doctrine expands from case to case" as was condemned by Mr. Justice Frankfurter in *Knapp v. Schweitzer*, 357 U. S. 371.

STATEMENT OF THE CASE

Had the appellant's statement of the case as set forth in her brief been confined to the *Facts* contained therein, we could probably have stipulated our agreement therewith. However, since appellant has seen fit to embellish her statement of the case with conclusions of fact, conclusions of law, and editorial comment, we feel it incumbent upon us to present to this Honorable Court a more accurate picture of the circumstances, including the conduct of this defendant-appellant, upon which this charge of contempt of a legislative committee is based.

The Ohio Un-American Activities Commission—a select committee of the Ohio General Assembly (R. 103)—was created in 1951 by legislative action. The committee's duties included *inter alia* the duty to investigate, study and analyze

> "all facts concerning persons, groups, and organizations * * * whose activities might adversely affect the contribution of *this state* (Ohio) to the national defense, the safety and security of *this state* (Ohio), the functioning of any agency of the *state* (Ohio) * * * or the industrial potential of *this state* (Ohio);" (Emphatics and parenthetical matter added).

(The omissions are not intended to conceal references to foreign affairs or agencies of the national government, but were omitted so as not to detract from natural emphasis upon the affairs of the State of Ohio.)

The effective date of the Act creating the Commission, and much of the operation of the Commission, came after the *sine die* adjournment of the 1951 Ohio General Assembly.

This Commission held many public hearings in early 1952. Witnesses before the Commission testified concern-

ing the appellant, and concerning her membership in and activities upon behalf of the Communist party (Appellant's brief p. 10; R. 60—61). On April 1, 1952, Anna H. Morgan appeared as a witness, apparently pursuant to a subpoena. The Court does not know—for the record does not show—whether or not she had ever been employed by the State of Ohio, or whether she was or was not a member of a trade union, or whether she was not connected with any state or federal educational institution, as alleged at page 12 of appellant's brief. The State of Ohio does know that Mrs. Morgan's husband was employed by Ohio's highest state educational institution—the Ohio State University—in the capacity of Curator or similar position of the University Museum.

In stating, at page 12 of her brief, that:

> "Questioning of appellant by counsel for the Commission began, without any preliminaries (R. 49). She was sworn and gave her name."

we do not charge that appellant is attempting deliberately to mislead this Honorable Court. In order to cure a possible oversight, however, we direct the Court's attention to pages 56-59 of the record, which clearly shows that immediately when called to the stand as a witness, this appellant first presented a written statement to the Commission which, as described by the Ohio Supreme Court (R. 124), was highly abusive and vitriolic. The witness was then sworn, and in response to the first question, stated her name. She then proceeded to refuse to answer any and all further questions propounded by the Commission. Those refusals are set forth at pages 49-56 of the record. The refusals included questions as to where she resided, as to her citizenship, how long she had been a resident of the county, her present employment, her membership and activ-

ities in the Communist Party. As pointed out in appellant's brief, the Commission chairman did advise the witness that she was permitted to refuse to answer questions that might tend to incriminate her, but that she was not permitted to refuse to answer questions simply for her own convenience.

This was after the witness had already charted her own contumacious course of conduct by her own statement and by her own answers to the first twelve questions.

A total of 47 questions were asked the appellant directed toward bringing to light the subject matter discussed at meetings of the Communist Party of Franklin County, the financing of Communist activities in Franklin County, the organization of Communist activities in Franklin County, her paid status in the Communist party organization in Franklin County, employment and labor strike activities in Franklin County, and her participation in a petition charging the Government of these United States with an official and studied policy to exterminate the Negro race in the United States.

After such hearings, the record of the hearings was presented to the then Prosecuting Attorney of Franklin County, who presented it to the Grand Jury of Franklin County. The grand jury indicted this appellant on 37 counts of violation of then General Code Section 12845. As set forth at pages 1 and 2 of appellant's brief, the succeeding opinions of the courts below then followed. So that no question can be raised as to deprivation of a trial by jury by reason of appellant's repeated references to trial without a jury (i.e. Appellant's brief pps. 1 and 16), we point out that defendant-appellant expressly waived a jury under the statutes of the State of Ohio, and voluntarily chose to be tried by a Court sitting as judge and jury. The opinions

of the trial court and the appellate courts are set forth in the Record and, unlike appellant's brief, are incorporated herein by reference without editorial comment.

The remainder of the appellant's statement of the case is a maze of conclusions of fact, conclusions of law, and editorial comment which we shall, for the sake of brevity, not refute sentence by sentence. Rather, we leave it the experienced judgment of this Court to weed out and discard statements of appellant's interpretation of the beliefs and assumptions of the Commission and the various Ohio Courts. We merely remark that never have we seen an attempt to invoke the sympathy of a Court so neatly tailored to fit the former decisions of that Court.

JURISDICTION

Because this Court has entered an order herein postponing further consideration of the question of jurisdiction to the hearing of this case on the merits, we find it necessary to comment upon the statements as to jurisdiction contained at pages 2-3 of appellant's brief. We concur with appellant that if this Court has jurisdiction to hear this appeal, such jurisdiction must rest upon 28 U. S. C., Sec. 1257 (2). We would point out, however, that a necessary prerequisite of such jurisdiction is that there is drawn in question the validity of an Ohio statute on the ground of its being "repugnant to the Constitution, treaties or laws of the United States", since the Ohio Supreme Court has already pronounced its decision in favor of the validity of the statute.

Since Section 12845, Ohio General Code, which provides for a penalty for contempt of the Ohio General Assembly, etc. can hardly be repugnant to the Constitution or laws of the United States, the only possible Ohio law with which we are here concerned as to its repugnancy is the Ohio

Un-American Activities Commission Act, (Former G. C. 76-28 to 76-35, inclusive; now Revised Code 103.31 et seq.) Therefore, in order for this Court to have jurisdiction, that Ohio Act must be repugnant to the Constitution of the United States or to the laws of the United States. The only possible *law* of he United States to which the Ohio Statute in question can be repugnant, so far as we are able to determine and so far as appellant's brief alleges, is the Smith Act (Title 18, U. S. C. Section 2383). Let us test that repugnancy. The Smith Act provides that certain classes of persons—violators of the Act—"shall be ineligible for employment by the United States or any department or agency thereof for the five years next following his conviction". The Smith Act certainly did not pre-empt the field to such an extent that the State of Ohio was protected from the employment of such individuals. Ohio might have enacted a statute which stated simply: "No person convicted of a violation of the Federal Smith Act shall be eligible for employment in any agency or institution of the State of Ohio". Our query would then be:

Since the United States has protected itself but failed to protect the State of Ohio in the same regard, does the State of Ohio have the power to protect itself in the same manner?

We respectfully submit that even this Honorable Court would not deny the State of Ohio that power to protect itself in the same manner as the United States, a protection not afforded to the State by the Smith Act. If the State of Ohio had power to so protect itself, such a statute would not then have been repugnant to, but in complete harmony with, the Smith Act. How, then, without destroying legislative interpretations, can it be said that a statute auhorizing a legislaive inquiry to see if such a state enactment is

necessary is repugnant to the Smith Act? We respectfully hope that our judicial processes have not yet reached the stage where the power to protect is no longer accompanied by the power to determine whether protection is necessary.

If the Ohio statute is not repugnant to the Smith Act, then appellant must rely upon the theory that the Ohio Un-American Activities Act is repugnant to the United States Constitution. Appellant's brief sets forth (at pages 3-5) seven (7) United States Constitutional provisions which she alleges are involved. While Article I, Section 8, Sub-section (1) provides "The Congress shall have power to * * * provide for the common defense and general welfare of the United States * * *", we fail to see how a state statute directing a legislative inquiry into that state's internal affairs is in conflict with the deputy of the United States to provide for the common defense.

We submit the Ohio statute in question does not constitute a bill of attainder prohibited by Article I, Section 10, Sub-section (1), also cited by appellant. At least, such has never been alleged, nor has this or any similar act been declared as such by any court decision which has come to our attention. We fail to see any other part of this particular provision which could conceivably apply to the case at bar.

In like manner, we fail to see any relationship whatsoever between the case at bar and Article II, Section 2, Sub-section (1) of the United States Constitution which constitutes the President as the Commander in Chief of the Army and Navy of the United States and of the Militia of the several states. The fact that the framers of our Constitution assumed there would be a militia of the several states, as well as an Army and Navy of the United States, provides interesting food for thought upon the question as to how

far our Federal Constitution actually goes in depriving the several States the right—and power—to protect themselves. Be that as it may, that question is irrelevant here, and the citation of that Constitutional provision in connection with the instant case can only be looked upon as another pellet in the "shotgun approach" of the appellant in her effort to make certain that every possible straw, whether existant or conjectural, is grasped.

We do not dispute the reference to Article VI, Subsection (2) which makes the United States Constitution and the laws of the United States pursuant thereto the supreme law of the land. We hasten to point out, however, that those laws and that Constitution are not all-inclusive. We have a deep and abiding conviction that this highest Court will not lightly treat and cast aside the Tenth Amendment thereto which, with equal strength specifically proclaims:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In all earnestness, we respectfully urge the Court that *unless* the United States Constitution delegates to the United States the power to investigate, study, and analyze facts concerning activities which might adversely affect the contribution of Ohio to the national defense, the safety and security of Ohio, the functioning of any agency of the State of Ohio, or the industrial potential of Ohio, or unless the United States Constitution prohibits the State of Ohio from doing these same things, any decision which holds that Ohio does not have power to do so is, itself, repugnant to the 10th Amendment of the United States Constitution.

It is readily understandable why appellant seeks to involve the First Amendment to the United States Constitution as another pellet in her "shotgun approach". What

this Amendment, which prohibits Congress from enacting certain laws, has to do with a state prosecution in state courts for contempt of a state assembly is lost upon us unless appellant is trying to bring herself within the scope of certain recent decisions of this Court dealing with Federal cases in Federal Courts which, unless closely analyzed, would seem to support the appellant's contentions.

Appellant then cites the Fifth Amendment to the United States Constitution which, along with the Fourteenth Amendment, is actually before the Court.

Since we are now before the only tribunal which can conclusively decide the question, we believe the time has come to meet the problem head-on as to whether the Fifth Amendment of the United States Constitution applies in a state proceeding. It must be remembered that we would not deny to the appellant any privilege against self-incrimination, for we have consistently argued, and the Supreme Court of Ohio has so declared, that appellant's privilege against self-incrimination, if any, existed under Article I, Section 10, of the Ohio Constitution. The Supreme Court of Ohio has, in the instant case, specifically held that this appellant "sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio".

We respectfully submit that in a long line of decisions the United States Supreme Court consistently held that the Bill of Rights of the United States Constitution when adoped "was for the protection of the individual against the federal government and its provisions were inapplicable to similar actions done by the states". *Twining v. New Jersey*, 211 U. S. 78 at 92.

In *Feldman v. United States*, 322 U. S. 487 at 490, 64 S. Ct. 1082, this Supreme Court stated:

> "The * * * Fifth * * * (Amendment) to the Constitution of the United States, prohibiting * * * compulsory self-incrimination * * * (is) directed exclusively against the activities of the Federal Government and * * * (has) no application to the states and their agencies." (Parenthetical matter added)

This principle was reaffirmed in *Adamson v. California*, 332 U. S. 46 at 51.

The application of the Fifth Amendment to the United State Constitution in a state proceeding is specifically and directly raised herein. This Court should, therefore, either reaffirm the long-established principle set forth above, or ineffectuate the same by overruling it.

The final constitutional provision invoked is the Fourteenth Amendment to the United States Constitution, which guarantees to the appellant "due process of law". This, we submit, is the only United States Constitutional provision properly invoked upon this appeal. We further submit that this Court must confine its deliberation to the question as to whether the Ohio statute is actually repugnant to the Fourteenth Amedment of the United States Constitution.

This case comes within the purview of Mr. Justice Frankfurter's statement (concurred in by Mr. Justice Harlan) in *Sweezy v. New Hampshire*, 354 U. S. 234, wherein he stated:

> "This case comes to us solely through the limited power to review the action of the states conferred upon the court by the Fourteenth Amendment."

This Court has held time and time again, as stated in *Wolf v. Colorado*, 338 U. S. 25, that:

> "The notion that the due process of law guaranteed by the Fourteenth Amendment is shorthand for the

first eight amendments of the Constitution and thereby incorporates them has been rejected by this court again and again, after impressive consideration. See e.g. *Hurtado v. California,* 110 U. S. 516; *Twining v. New Jersey,* 211 U. S. 78; *Palko v. Connecticut,* 302 U. S. 319."

Once again, then, unless a long line of cases is to be overruled, it is clearly apparent that this Court can only review the case at bar in light of the Fourteenth Amendment, and any argument herein should be confined to that single question which comes within the jurisdiction of this Court.

QUESTIONS PRESENTED

At pages 7-8 of appellant's brief, there are enumerated three (3) questions in eleven (11) branches which appellant alleges are presented to this Supreme Court in this case. We cannot dispute that these are the questions which appellant would like to litigate in this appeal, since many recent decisions of this Court on those questions are obviously in her favor. But—we ask in all sincerity—are those questions, as phrased by the appellant, actually present in the instant case. We submit they are not, as will be shown in our argument herein which responds to the appellant's questions and arguments point by point. We further submit there is only one question before this Court, which is:

"Are the statutes of the State of Ohio which created, directed, and empowered the Ohio Un-American Activities Commission to inquire into the internal affairs of the State of Ohio void as repugnant to the Fourteenth Amendment of the United States Constitution?"

ARGUMENT

Instead of presenting a sumary of argument, as set forth at pages 20-23 of appellant's brief, we shall save our summary for the conclusion hereof. Instead, we shall respond to the appellant's eleven (11) contentions point by point.

The first question presented by appellant's brief, and the first division of her argument (appellant's brief 7, 23) is devoted to the contention:

I

The Statute Establishing the Commission is not Repugnant to the United States Constitution.

A. Her first assertion in this regard is:

The State has no power to act in national and international affairs, or in the field of subversion, which Congress has fully occupied.

This is a perfect example of what counsel earlier referred to as a question perfectly tailored from whole cloth to fit the prior decisions of this Court. We do not—we cannot—contend that the State of Ohio has power to act in national or international affairs. Neither can we agree that Congress has fully occupied the field with which the State of Ohio is concerned in the instant case. Appellant's brief, at page, 23, so neatly emphasizes all references to national and internationl affairs that any court could highlight those items to the complete submersion of all references to the internal affairs of the State of Ohio. On the other hand, a court can highlight the internal affairs of the State of Ohio as contained in that same section, and logically conclude that, with incidental references to national and international affairs, the statutes in question were directed toward the internal affairs of the State of Ohio,—an area in which, as pointed out above, the Federal Smith Act left the State of Ohio wholly vulnerable—and an

area of legislation in which we find no specific delegation to or prohibition by the United States.

Thus, we stand on the threshold of American judicial history—the question to be answered being whether the power of the United States, which has been exercised to protect only itself, supercedes the retained power of the states to protect themselves in similar fashion under the Tenth Amendment to the United States Constitution.

In the final paragraph on page 23 of her brief, appellant makes the following significant statement:

> "The questions were not limited to matters of concern to the State of Ohio."

The implication is broad, and entirely accurate, that some (even many) of the questions *did* pertain to matters of concern to the State of Ohio.

We come now to appellant's discussion on page 24-25 of her brief and her attempt to correlate the Ohio Un-American Activities Commission Act with a State sedition statute struck down by this Court in *Pennsylvania v. Nelson*, 350 U. S. 497. We have carefully read the Pennsylvania Sedition Act, and the decision of this Court in the Nelson case, supra. If this appellant had been charged, tried, and convicted under Ohio's criminal syndicalism act, we would be inclined to agree that under the doctrine of the Nelson case, supra, such conviction would be the subject of reversal.

This is not such a case.

The only question before this Court—whether this contumacious witness is guilty of contempt of a legislative committee of the Ohio General Assembly—does not present the question of whether Ohio has invaded the sedition field. We are not here dealing with a state sedition statute, but merely a legislative inquiry to determine whether or not

legislative action was necessary. Ohio was not invading the field of either foreign affairs or the protection of the federal government from invasions and insurrections, as alleged at page 24 of appellant's brief.

Appellant's allegation that "The legislature of Ohio therefore could not pass a valid state sedition statute" is wholly and completely answered by the simple statement that nowhere in the record, or otherwise, does there appear any indication that Ohio was attempting or intending to pass a state sedition statute. Appellant understandably attempts to classify the act establishing the Un-American Activities Commission as a "State Sedition Statute", for if it should be so held, it would inure to appellant's benefit. We are, however, content to leave the decision as to whether this Ohio act operates as a "State Sedition Statute" to this Honorable Court.

As to appellant's second reason for declaring the act establishing the Ohio Un-American Activities Commission to be invalid (brief p. 25), we can only comment that in our experience, limited as though it may be, this is the first time that a court has been asked to accept the personal views of an individual as sufficient basis upon which to found a judicial determination. While Mr. Saxbe, Ohio's former Attorney General, is an honorable gentleman, his views are still those of one individual.

If the Ohio General Assembly could not pass any valid statutes concerning those affairs involving its own governmental, educational, and business institutions because this field was already occupied by Congress and was limited to the federal government by the federal Constitution, as alleged by appellant at page 26 of her brief, then of course the resultant legislation,—Sections 143.271 and 143.272 of the Ohio Revised Code which deal with the qualifications of

teachers in the Ohio Schools and with the qualifications of employees of the State of Ohio—will necessarily fail when tested. If appellant's contention is correct, it is indeed unfortunate that the State of Ohio no longer has the power to govern its own internal affairs which it has possessed for one and a half centuries, and which government of its internal affairs was expressly guaranteed to it by the framers of our Constitution

B. The next issue presented by appellant is:

> *"The Commission is given statutory authority to investigate the political beliefs, associations and activities of private citizens, thus abridging their constitutionally protected freedoms."*

In this phase of appellant's brief, she attempts to interject the issue of the First Amendment to the United States Constitution. When this case started some seven years ago it was a relatively simple one involving the privilege against self-incrimination, immunity, and whether appellant's refusals to testify constituted contempt. Periodically, since that time, every decision of this Court favorable to the appellant has confronted the State of Ohio with a new issue either to distinguish or overcome. Notable examples are *United States v. Bart*, 349 U. S. 219; *Emspak v. United States*, 349 U. S. 190; and *Quinn v. United States*, 349 U. S. 155, which were decided by this Court during the early appeals of the instant case in the Ohio Courts. Confronted with the problem of direction to answer, the disposition of this problem is discussed elsewhere herein.

Soon thereafter this Court decided, in *Pennsylvania v. Nelson*, 350 U. S. 497, that the Smith Act supersedes the the enforceability of a state sedition statute. With this decision we have no quarrel, but immediately this appellant sought to turn the Ohio statute providing for a legislative

inquiry into Ohio's internal affairs into a state sedition statute so as to bring this case within the scope of the Nelson case. Even the hastiest comparative reading of the Ohio act in question with the Pennsylvania Sedition Act will show the clear distinction between them.

Recently, this Court decided *Watkins v. United States*, 354 U. S. 178, and *Sweezy v. New Hampshire*, 354 U. S. 234. With these two decisions appellant apparently expects to run the State of Ohio right out of Court, since, if her interpretation thereof is accepted, all issues before the Court are conclusively settled.

Fortunately for the State of Ohio, however, the majority opinion in each of those cases points out the distinguishing factor between those cases and the instant case.

In the Watkins case, at page 182, Chief Justice Warren points out that case "is not the case of a truculent or contumacious witness who refuses to answer all questions". The majority opinion adopted the Government's own appraisal that:

> "A more complete and candid statement of his past political associations and activities (treating the Communist Party for present purposes as a mere political party) can hardly be imagined. Petitioner certainly was not attempting to conceal or withhold from the Committee his own past political associations, predilections, and preferences."

Compare this with the instant case wherein appellant, before she even knew what questions would be asked, presented a highly abusive and vitriolic statement proclaiming her refusal to answer and then proceeded to refuse to answer each and every question propounded to her.

In the Sweezy case, Chief Justice Warren again pointed out how the witness "testified at length upon his past conduct and associations". Mr. Justice Frankfurter, in his

concurring opinion, referred to the fact that Sweezy answered most of the questions propounded to him. This is a far cry from the contumacious conduct of the appellant Morgan.

The appellant now asks this Court to expand the doctrine of the *Watkins* and *Sweezy* cases to cover the blatantly truculent witness who stands guilty of the most contumacious of conducts, and forever excuse all persons who defy their sovereign state by simply refusing to answer. The State of Ohio merely asks this Court—now, while there is still time to do so—to brake "the momentum of ajudication whereby a doctrine expands from case to case".

The members of this Honorable Court are as fully aware as counsel for the State of Ohio that in the conduct of human affairs, some touch of freedom of religion, speech, association, assembly, or press is always present. This Court is equally aware that the conduct of human affairs, for such reasons alone, does not stand immune from inquiry, censure, and even punishment.

If the instant case is to be determined upon the ground that this legislative inquiry into the effect of the Activities of the Communist Party upon the internal affairs of the State of Ohio violates the First Amendment rights of an alleged member of that Communist party, then we respectfully submit that 150 years of constitutional law and history of this nation have gone for naught. Our unalterable faith in our constitutional form of government assures us such will not be the case, and we refrain from further discussion with regard thereto.

C. The third branch of appellant's attempt to establish the repugnancy of the Ohio statutes to the Constitution is as follows:

> *"The statutory requirement that the Commission 'disclose' all persons and groups having certain objec-*

> *tions serves no valid legislative purpose and pins a 'badge of disloyalty' on individuals without due process of law."*

Throughout her brief, appellant has chosen to construe certain things far and above the interpretation we would place upon them. One example is the distortion of this Court's notation of "probable jurisdiction" in *Uphaus v. Wyman*, 356 U. S. 926 in to the flat statement at page 2 of her brief:

> "This Court has jurisdiction to hear an appeal testing the constitutionality of a state statute establishing a legislative investigation committee in the field of 'subversive activities'."

Perhaps this Court does have such jurisdiction, but appellant's citation does not establish it.

The same is true of appellant's statement at page 31 of her brief which refers to "the statutory requirement that the Commission 'disclose' all persons and groups having certain objectives * * *". There is no such statutory requirement. The statute merely gave the Commission power to maintain liaison with other agencies in devising and promoting means of disclosing those persons and groups who seek to alter or destroy the government of Ohio or of the United States by force, violence, intimidation, sabotage or threats of the same. Somehow, we cannot feel that the disclosure of this type of person is such a dastardly act as to be deserving of condemnation. Perhaps our views are tinged with bias based upon our own allegiance to the United States and Ohio governments, and our belief in, and support of, the constitutional forms thereof.

Be this as it may, the statement which which we take the greatest issue is appellant's statement (brief, p. 32) that:

> "Clearly a legislative body has no power to disclose the names of persons as being 'subversive' or 'disloyal'."

We are not talking now about "power to expose for the sake of exposure" or a "power to expose where the predominant result can only be an invasion of the private rights of individuals". We are talking about appellant's flat statement, *apparently her desired expansion of the views of this Court*, that "clearly, a legislative body has no power to disclose the names of persons as being 'subversive' or 'disloyal' ". If this be true—if we have reached the stage where our Congress or our State assemblies have no power to proclaim traitors in our midst,—then God help this great nation of ours. We *cannot* believe such to be the law of the land. A deprivation of power to expose for the sake of exposure we can understand, but a deprivation of the power to disclose disloyal persons under any circumstances is beyond our comprehension.

The crux of this branch of appellant's argument is that the Ohio statutes pins a "badge of disloyalty" on individuals without due process of law. As pointed out above, the entire jurisdiction of this Court in the instant case rests upon the Fourteenth Amendment to the United States Constitution, and appellant's entire argument must be based upon the contention that she has been deprived of "due process of law." We believe it would be "refreshing" to read the Fourteenth Amendment "in the naked form in which it was written," for amidst all of the covering smoke produced by appellant's arguments, one beacon blaze stands out for all to see. The Fourteenth Amendment provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof are

> *citizens* of the United States and of the state wherein they reside. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States*; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added)

The appellant claims that Ohio has attempted to abridge the privileges and immunities afforded her by the Constitution. *We charge that the appellant has deliberately and wilfully refused to bring herself within that protective mantle when she refused to answer the question:*

> *"Are you a citizen of the United States, Mrs. Morgan?"* (R. 50)

There is only one way in which the answer to that question could conceivably be self-incriminating, and that would be if the appellant were illegally within the shores of our country. *Unless Anna M. Morgan is illegally within the shores of this country, she stands convicted of contempt of the legislative committee by the words from her own mouth.*

Almost 170,000,000 Americans are proud to proclaim their American citizenship; regardless of any arguments or statements of the appellant, her contumacious refusal to acknowledge her citizenship can stem from only one source—her defiant contempt of the body asking the question.

We do not know whether a "badge of disloyalty" comes within the scope of deprivation of "life, liberty or property," but we do know that if Anna Morgan wears a badge of disloyalty, it was pinned there by her own conduct, and not by the State of Ohio.

D. Appellant contends in this branch of her argument that *"the statute is invalid because of its vague language"* and further contends, in branch E, that:

> *"The vague statutory grant of authority to the Commission made it impossible for a reviewing court to judge whether the Commission has ranged outside the area committed to it by its parent assembly, and insulated the assembly from the witness subjected to the sanction of compulsory process."*

In this regard, the State of Ohio declines to engage in a duel upon the field of semantics. If the statute in question is, in fact, guilty of "the vice of vagueness," and therefore contains "all of the evils" mentioned in the *Sweezy* and *Watkins* cases, *supra*, we can only point out that if the Ohio legislature had been able to pinpoint the specifics upon which it desired information, there would have been no need for the inquiry in the first instance. But let us assume for the purpose of argument that this "vice of vagueness" is present. It should be obvious to this Court from the record that even if the Ohio statute had been as specific as appellant would have liked to have had it, appellant's conduct would have been no different. She came with a prepared statement denouncing the "unconstitutional committee", its "persecution", the "FBI", the "American pattern of lynching negroes", preparations for national defense, our United States Attorney General, our military leaders, "a cowardly Supreme Court riding on the political coat-tails of a corrupt administration", "the Smith, McCarren and Taft-Hartley Acts", "veterans' organizations", and other American institutions.

The appellant came well-prepared to do that which she did—viz., contemptuously refuse to answer all questions of this inquiring body.

The appellant's attempt to swing the searchlight of this Court's knowledge and truth to the vagueness of the Ohio statute is a deliberate effort to swing that searchlight away from where it should be focused. Throughout seven years of litigation we have refrained from challenging the appellant in this regard. But this writer—citizen, United States of America—believes the searchlight should be focused not on the Ohio statute, but on Anna H. Morgan. Let her deliberate, wilfull, and contumacious conduct before the Commission—her contempt for the State of Ohio—be subjected to the probing rays of that searchlight, and let the American people know that while they are protected by the greatest freedoms ever known, there is still a point beyond which those freedoms do not transcend the rights of the nation as a whole and its component states.

For the reasons hereinbefore set forth, we respectfully submit the Ohio statute creating the Ohio Un-American Activities Commission is not repugnant to the federal Constitution.

II

The Ohio Immunity Act, as Interpreted by the Supreme Court of Ohio, is not repugnant to the United States Constitution.

The Ohio immunity act reads as follows:

> "Except a person who, in writing, requests permission to appear before a committee or subcommittee of the general assembly, or of either house thereof, or who, in writing, waives the rights, privileges, and immunities granted by this section, the testimony of a witness examined before a committee or subcommittee shall not be used as evidence in a criminal proceeding against such witness, nor shall a person be prosecuted or subjected to a penalty or forfeiture on account of a

> transaction, matter, or thing, concerning which he testifies, or produces evidence.' This section does not exempt a witness from the penalties for perjury."

A. The first branch of appellant's argument alleges the immunity act "displaces the right of a witness to refuse to answer on the ground of self-incrimination when the answers could become the basis for prosecution in the federal jurisdiction, which is co-terminus with state jurisdiction." In the instant case the witness invoked the Fifth Amendment of the United States Constitution to claim her privilege against self-incrimination. That such Fifth Amendment is restrictive of national action only, is too well established to require further citation of authorities in support thereof, over and above those already presented herein. We are not here confronted with a deprivation of the privilege against self-incrimination, however. The Supreme Court of Ohio in *State v. Morgan*, supra, specifically stated: "It follows that appellant sufficiently indicated her invocation of any rule of privilege to which she was entitled under the protection against self-incrimination afforded her by Section 10, Article I of the Constitution of Ohio." It has been decided by this Court time and time again that in order to supersede a witness's privilege against self-incrimination, the immunity granted need only be co-extensive with the privilege being supplanted. The latest pronouncements of this doctrine are found in *Knapp v. Schweitzer*, 357 U.S. 371, 78 S.Ct. 1302, wherein the court stated:

> "To achieve these essential ends of state government the States may find it necessary, as did New York, to require full disclosure in exchange for immunity from prosecution. This cannot be denied on the claim that such state law of immunity may expose the potential witness to prosecution under federal law. See Jack v. Kansas, 199 U.S. 372, 50 L ed 234, 26

S.Ct. 73, 4 Ann. Cas. 689. Every witness before a state grand jury investigation would feel free to block those vitally important proceedings. In construing the Fifth Amendment and its privilege against self-incrimination, one must keep in mind its essential quality as a restraint upon compulsion of testimony by the newly organized Federal Government at which the Bill of Rights was directed, and not as a general declaration of policy against compelling testimony. It is plain that the amendment can no more be thought of as restricting action by the States than as restricting the conduct of private citizens. The sole—although deeply valuable—purpose of the Fifth Amendment privilege against self-incrimination is the security of the individual against the exertion of the power of the Federal Government to compel incriminating testimony with a view to enabling that same Government to convict a man out of his own mouth."

In *Brown v. United States*, U.S., 79 S.Ct. 539, the Court at page 543 stated:

"For more than half a century it has been settled that this statute confers immunity from prosecution coextensive with the constitutional privilege against self-incrimination, and that the witness may not therefore lawfully refuse to testify. Brown v. Walker, 1896, 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819. The context in which the doctrine originated and the history of its reaffirmance through the years have been so recently re-examined by this Court in Ullmann v. United States, 350 U.S. 422, 76 S.Ct. 497, 100 L.Ed. 511, as to make it a needless exercise to retrace that ground here. Suffice it to repeat that Brown v. Walker has become 'part of our constitutional fabric.' 350 U.S. at page 438, 76 S.Ct. at page 506."

The remainder of this branch of appellant's argument (pages 41 to 47 of her brief) is devoted to an attempt to reverse the many long-standing decisions of this court to the effect that the immunity, in order to supplant the privilege, need be only coextensive with the privilege. We be-

lieve the best argument contra the appellant's contention is found in the Supreme Court of Ohio's interpretation of the Ohio immunity statute which is found in *State of Ohio v. Morgan*, supra, and wherein the court said at pages 540 to 542:

"The question is thus refined to whether a state immunity statute, which is admittedly sufficient to preclude prosecution under the laws of the state but which does not afford immunity from federal prosecution, supplants the right of a witness, based upon the protection guaranteed by the *state* Constitution, to refuse to answer on the ground of self-incrimination.

In the case of *United States v. Murdock*, 284 U.S. 141, 76 L.Ed. 210, 52 S.Ct., 63, 82 A.L.R., 1376, the Supreme Court of the United States said: 'This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, *and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute.* The principle established is that *full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination.*' (Emphasis ours)

In like manner the Supreme Court later said: 'The immunity from prosecution, like the privilege which it supplant, pertains to a prosecution in the same jurisdiction.' *Feldman v. United States*, 322 U.S., 487, 493, 88 L.Ed., 1408, 64 S.Ct., 1082, 154 A.L.R., 982.

And in the *Feldman case* Mr. Justice Frankfurter, speaking for the majority of the court, quoted Chief Justice Taney in *Ableman v. Booth*, 21 How., 506, 516, 16 L.Ed., 169, as follows:

"The powers of the general government, and of the state, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States is

as far beyond the reach of the judicial process issued by a state judge of a state court, as if the line of division was traced by landmarks and monuments visible to the eye.".

Thus, the state and national governments are held by the Supreme Court of the United States to be separate sovereignties, and protection by one in granting sufficient immunity within its domain is sufficient to impose upon the witness the duty of testifying without invoking the privilege of self-incrimination, without regard to protection against the other within its separate domain. * * * *

We find no valid reason for disagreeing with the interpretations and applications by the Supreme Court of the United States, as hereinbefore set out, and conclude that the inability of the state of Ohio to provide immunity from possible federal prosecution does not defeat the immunity statute here under consideration, which grants complete immunity from prosecution by the state.

It follows that the immunity from prosecution by the state of Ohio concerning any of the matters to which appellant might have testified afforded her as much protection from self-incrimination as the Constitution of Ohio guarantees, and her refusal to answer on the basis that she might incriminate herself was an attempted invocation of a rule of privilege which, by virtue of the immunity granted, was unavailable to her."

B. The second branch of this phase of appellant's argument contends: "The immunity act, as interpreted and applied, permits a witness to be convicted of contempt for refusal to answer questions which he was not directed to answer and without instructing him that he is clothed with immunity from state prosecution." We are not unfamiliar with the cases cited by the Appellant in this part of her brief, pages 47 to 50. We cannot improve upon the reason-

ing of the Supreme Court of Ohio in the instant case, wherein the majority opinion state:

> "Thus, the witness knew or was presumed to know that under the statute her invocation of the rule of privilege against self-incrimination was a useless act under the law, since such rule of privilege had been supplanted by a statute affording her sufficient immunity from prosecution to satisfy the protection against self-incrimination guaranteed by the Constitution. Her mere refusal to answer on such a basis constituted contempt, and the interpolation of such a frivolous objection imposed no duty upon the commission to inform her of what she already knew—that she had no right to refuse to answer on such grounds.
>
> It is seen that a direction to answer in such a case would serve no substantial purpose. Although it may be true that the commission could have informed appellant that she was in contempt and subject to prosecution which might be avoided, at the sound discretion of the commission, if she chose to answer, an answer even at that point would, upon a subsequent trial, go only to show a mitigation of the contempt already committed.
>
> It is axiomatic that neither ignorance of the law nor a mistake in its interpretation affords a valid defense in a criminal prosecution. A witness cannot be heard to say in one breath that he knows enough of the law to claim the privilege against self-incrimination and in the next breath that he knows nothing of the immunity statute, or that he has misconstrued it.
>
> Appellant argues that she refused to answer because she felt she was not afforded such full and complete immunity as to deprive her of the right to refuse on the ground of self-incrimination.
>
> Regardless of whether this be interpreted to show a willful and contumacious refusal to answer, it certainly indicates a deliberate refusal to answer under a mistaken interpretation of the law.
>
> It is argued also that the *Quinn case, supra,* is in effect, a mandate by the Supreme Court of the United States to all legislative bodies, both national and state, that they must specifically direct a witness to answer

before he may be cited for contempt, and a directive to all judicial tribunals in the nation that such must be the case before a witness may be convicted of contempt.

An examination of the reasoning behind that decision compared with the reasoning behind the decisions in the instant cases shows such argument to be fallacious. We are here interpreting the effect of a *state* immunity statute (Section 60, General Code) providing not only that testimony given by a witness shall not be used in a subsequent criminal proceeding but also that the witness shall not 'be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing, concerning which he testifies'; and we are determining for the first time in regard to this particular statute that such protection is sufficient to supplant the rule of privilege against self-incrimination, i.e., that both the statute and the rule stem from the guaranty of protection from self-incrimination afforded by Section 10, Article I of the Constitution of Ohio, and that the scope of protection afforded by the former is sufficient to supplant the protection afforded by the latter.

This, however, is not the case with the federal immunity statute, Section 3486, Title 18, U. S. Code, which was applicable to the defendant in the *Quinn case.*'' * * * *

The fact that the Supreme Court of the United States has construed the effect of a federal statute upon a portion of the federal Constitution in a certain manner, however, in no way precludes the highest tribunal of a state from construing the effect of a similar but not identical state statute (as hereinbefore set out) upon a similar provision of the state Constitution, particularly where it is well recognized that the operation of such constitutional provisions is directed exclusively and individually to the federal and the state governments, *respectively.*

'We (the Supreme Court of the United States) have nothing to do with the interpretation of the Constitution of the state and the conformity of the enactment of the Assembly to that Constitution; those questions

are for the consideration of the courts of the state, and their decision of them is final.'

'The Fifth Amendment to the Constitution of the United States is not restrictive of state, but only of national action.' *Hunter v. City of Pittsburgh*, 207 U.S., 161, 176, 52 L.Ed., 151, 28 S.Ct., 40. See, also, *Missouri v. Dockery*, 191 U.S., 165, 48 L.Ed., 133, 24 S.Ct., 53, 63 L.R.A., 571; *Merchants' & Manufacturers' Bank v. Pennsylvania*, 167 U.S., 461, 42 L.Ed., 236, 17 S.Ct., 829; and *Gabrielli, a Minor, v. Knickerbocker*, 12 Cal. (2d), 85, 82 P. (2d), 391.

It follows that the *Quinn case*, admittedly based upon the assumption that the defendant therein had a right to refuse to give self-incriminating answers, is not controlling in any manner in the instant cases. The state advances the theory that a direction by the commission to answer was unnecessary since a statement read by appellant just prior to being sworn, and later introduced into the record of the hearing, is alone sufficient to establish the contumacious intent in her refusal to answer. In the light of what we have said, however, concerning the necessity of a direction to answer, it is neither necessary to consider this premise nor to give such statement, which is highly abusive and vitriolic, the dignity of perpetuation in this opinion.

Thus, since the immunity statute precluded appellant's right to claim the rule of privilege against self-incrimination, and Section 12845, General Code (Section 2917.42, Revised Code), makes a refusal to answer questions pertinent to the matter under inquiry a misdemeanor, appellant's refusal to answer under the claim of the rule of privilege constituted a violation, and as a direction thereafter could serve no substantial purpose, it was unnecessary.''

This Court must either accept or reject the reasoning of the Supreme Court of Ohio, so we shall not belabor the Court further on this point.

C. The third attempt of the appellant to establish the Ohio immunity act as being repugnant to the United

States Constitution is an attempt to establish that the Un-American Activities Commission was not a committee of the General Assembly.

It is, of course, a fundamental precept of jurisprudence in the State of Ohio that the syllabi of the opinions of the Ohio Supreme Court are "the law of the case". In the instant case, the Ohio Supreme Court, in interpreting a state statute, has effectively foreclosed appellant's argument contained in this branch when it announced, in Syllabus 1, State of Ohio v. Morgan, supra:

> "A commission created by statute, which is authorized to function after sine die adjournment of the General Assembly and which is composed solely of members of the General Assembly, impersonally described, and whose designated function is to investigate subversive activities and 'to recommend such additional legislation or revision of existing laws as may seem advisable and necessary' to the next General Assembly, is within the creating powers of the General Assembly under Section 8, Article II of the Constitution of Ohio, authorizing that body to obtain through committees or otherwise information affecting prospective legislation, is within the term, 'committee,' as used in that article, possesses all the attributes of a 'select committee' of the General Assembly, and is, in fact, a 'select committee' thereof within the purview of Section 12845, General Code (Section 2917.42, Revised Code)."

We therefore respectfully submit that, for the foregoing reasons, the Ohio immunity statute is in no way repugnant to the United States Constitution.

III.

Was Appellant Denied Due Process of Law by Conviction for Wilful Refusal to Answer Questions Pertinent to the Matter Under Inquiry?

In Branch A, appellant alleges "*The evidence does not support a finding that appellant wilfully refused to answer the questions.*"

The appellant's contention in this regard is summed up in her closing sentences where she alleges it was necessary for the State to show an intention on appellant's part to defy the order of the Commission, and that no such showing was made. We earnestly submit that no record could more explicitly show an intention on the part of a witness to defy the Commission. If a prepared statement announcing a refusal to answer questions, whatever they might be, followed by such refusal, is not defiance of the Commission, we know not what a defiance would be.

Quoting The Supreme Court of Ohio:

> "It is argued also that the chairman of the commission in some way contributed to appellant's misfortune by stating to her:
>
> 'Mrs. Morgan, I should like to advise you under the Fifth Amendment, you are permitted to refuse to answer questions that might tend to incriminate you.
>
> 'Mrs. Morgan: Yes.
>
> 'Chairman Renner: But you are not permitted to refuse to answer questions simply for your own convenience. Counsel may proceed.'

Although the chairman obviously misstated the law, the question is whether such misstatement affected the alleged violation by Mrs. Morgan of Section 12845, General Code.

In order to find that the chairman's statement affected her *conviction*, we must necessarily find that it

in some way affected appellant's *behavior at the hearing.* A thorough search of the record fails to disclose that this was the case.

Appellant indicated, in a prepared statement which she presented to the commission prior to the hearing, that she intended to 'claim the protection of the Fifth Amendment and remain silent before this committee,' and she refused to answer on that ground the 12 questions propounded to her *prior to the chairman's statement.* Her subsequent refusals to answer are made in the same words and manner as her prior refusals.

It is also interesting and significant to note that the chairman, at another point in the Morgan hearing, said, 'Mrs. Morgan, are you aware of the fact that your failure to answer questions—some questions of this commission, might also *tend to put you in an embarrassing situation?*'

The only hypothesis consistent with the record of this hearing is that Mrs. Morgan was well aware of what she considered to be the law and her rights thereunder, and that such statement neither mislead her nor induced her to act in any manner other than that which she deliberately chose." *State of Ohio v. Morgan,* 164 O. S., 529 at 548.

Appellant charges that "the action of the Commission did not constitute fair play within the meaning of the due process clause of the Fourteenth Amendment." We were not aware that "fair play" is a one-way street. If appellant's views are correct, the State of Ohio has been laboring under the erroneous impression that the rights and privileges of citizenship are accompanied by the duties of citizenship. If the appellant can successfully evade the duties of citizenship—the other side of the street which appellant would make one-way—by the simple expedient of refusing to acknowledge her citizenship, how then can she in the same breath claim the rights and privileges bestowed upon her only if she in fact possesses such citizenship. The rationale of the appellant's argument escapes us.

B. Here, appellant alleges:

"The evidence does not support a finding that the questions asked were pertinent to the matter under inquiry."

In this branch of her argument, appellant heavily relies upon the decision of this court in the *Watkins* and *Sweezy* cases, *supra*. As pointed out heretofore, both the Sweezy and Watkins cases involved different fact situations. The witness in each of those cases had indicated his willingness to cooperate with the Committee with the exception of certain types of questions. Each witness specifically raised the question of pertinency when he refused to answer certain questions, after having answered other questions of the Committee. Compare this with Anna Morgan's declaration, which she fulfilled completely, that she would remain silent before the Ohio Committee, not on the grounds of pertinency, but on the grounds of a defiant and contumacious refusal to answer under an alleged claim of privilege against self-incrimination. Both Watkins and Sweezy presented statements to the Committee of Congress which were temperate in nature and were in no way derogatory of the Committee. We ask this court to compare those statements with the statement of Anna Morgan found at pages 57 to 59 of the record. Her statement, on its face, is one of the most vitriolic, abusive, and derogatory statements with which this writer has ever been confronted.

We have made reference above to the type of vilification which was spread throughout her statement. There is no doubt that in the case at bar the Ohio Un-American Activities Commission was dealing with a deliberately contumacious witness, who was not objecting to, nor was she ever concerned with, the question of pertinency. At no time did

she indicate in the slightest way that she felt any question was not pertinent to the matter under inquiry. Although the appellant came to the hearing unaccompanied by counsel, the Morgan case is otherwise similar to the Barenblatt case, *Barenblatt v. United States*, 252 F. 2d, 129, wherein the court stated:

> "The record of the hearing at which Barenblatt appeared and during which the questions in controversy were asked is devoid of any objection, interposed on the ground of pertinency. Indeed, every indication is that he came prepared to refuse to answer any questions of moment—pertinent or not."

Typical of the appellant's attitude before the Committee is the following excerpt from the record:

> "Question by Mr. Isaacs: Are you a citizen of the United States, Mrs. Morgan?
>
> Answer. I appeal under the Fifth Amendment.
>
> Question. You say you appeal under the Fifth Amendment?
>
> Answer. I continue to appeal under the Fifth Amendment, not to answer that question.
>
> Question. Does that mean that you refuse to answer? (fol. 105)
>
> Answer. I refuse to answer under the Fifth Amendment.
>
> Question. And by the refusal to answer under the Fifth Amendment, you say to answer would tend to incriminate you?
>
> Answer. Yes.
>
> Chairman Renner: Would you, Mrs. Morgan, be kind enough to tell the members of the Commission what the Fifth Amendment is?
>
> Mrs. Morgan: That is the Fifth Amendment that I am appealing under.
>
> Chairman Renner: Do you know what the Fifth Amendment is?
>
> Mrs. Morgan: It is the Fifth Amendment that I am appealing under, yes.

Chairman Renner: You haven't answered the question.

Mrs. Morgan: I am appealing under the Fifth Amendment."

Thus, by refusing to even claim her citizenship, we submit this witness has removed herself from the constitutional rights afforded to *citizens* of this United States.

C. In this final branch of her argument, appellant raises the question as to whether she is guilty of one contempt or of 32 contempts of the Ohio Un-American Activities Commission for her contumacious refusals to answer. The Ohio Supreme Court, construing the statutes of the State of Ohio, affirmed the conviction of this appellant on 32 counts of contempt of the Commission. While the Ohio court did not discuss in its opinion this particular phase of appellant's argument, the same argument was presented to that court, and the Ohio Supreme Court's rejection of the same under the Ohio statute is eminently clear.

After attempting to limit the 32 counts of contempt to a single contempt, the appellant then says the single contempt is not a contempt because the area of questions "is one protected by the First and Fourteenth Amendments and is outside the jurisdiction of the State of Ohio." This, of course, is merely a restatement of appellant's entire argument in the case at bar.

CONCLUSION

By way of summary, we would express our agreement with the Supreme Court of Ohio when it stated in Syllabus 2 of *State of Ohio v. Morgan*, supra, thus making it the law of the case:

"The General Assembly and its committees have a right to the testimony, pertinent to the matter under

inquiry, of each and every citizen of this state in order to obtain information affecting legislative action under consideration or in contemplation, and each citizen has a corresponding duty to give such testimony, subject only to the protection afforded him b 'he Constitution and by statute."

The record in the instant case clearly demonstrates that the appellant came prepared to wilfully, deliberately, and contumaciously refuse to answer any and all questions propounded to her by the Commission. That Commisison was a duly constituted agency of the State of Ohio, and the State of Ohio has provided a penalty for contempt thereof. Mrs. Morgan, through her truculent attitude and conduct, committed as deliberate a contempt of that Commission as could conceivably be imagined. As a result, the State of Ohio has imposed upon her a fine of $500.00. She now asks this court to reverse all of the Ohio courts who have heard and decided this case many times.

We respectfully submit she is guilty of contempt under the Ohio statutes as she has been pronounced by the Ohio courts, and therefore the decision of the Supreme Court of Ohio should be affirmed.

Respectfully submitted,

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Counsel for Respondent.